FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1902.

Supreme Court U. S.
FILED
MAR 13 1903
JAMES H. McKENNEY,
Clerk.

No. 203.

JAMES HENNESSY ET AL., APPELLANTS,

vs.

RICHARDSON DRUG COMPANY.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

ADOLPH L. PISCOTTY,
Counsel for Appellants.

(18,341.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 6306

Supreme Court of the United States

OCTOBER TERM, 1902.

No. 203.

JACQUES RICHARD MAURICE HENNESSY AND OTHERS, APPELLANTS,

vs.

RICHARDSON DRUG COMPANY, APPELLEE.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

Counsel for appellants submits the following memorandum on the point suggested by Mr. Justice Brown on the argument, viz., whether it was sufficient to allege, as was done in this bill, that the value of the trade-mark sought to be protected exceeded $2,000, or whether there should have been an allegation that the amount of the damage done by the acts of the defendants exceeded that sum.

On the argument reference was made to the following cases and text writers as sustaining the contention of the appellants and passing upon this exact point:

Symonds *vs.* Greene, 28 Fed. Rep., 834.

Hennessy *vs.* Herrman, 89 Fed. Rep., 669.

Foster on Federal Practice, § 16, p. 51.

See also Hopkins on Unfair Trade, p. 216.

This court is, of course, not bound by any of these decisions, but it is submitted that they are based on correct principles and are supported by the decisions of this court.

They are merely an application of the general rule, approved by this court, that in an action for an injunction jurisdiction is determined by the value of the right to be protected and by the values of the object to be gained.

Mississippi & Missouri R. R. Co. *vs.* Ward, 2 Black, 485.

Market Co. *vs.* Hoffmann, 101 U. S., 112.

See also Humes *vs.* City of Ft. Smith, 93 Fed. Rep., 862.

Delaware & Lackawanna R. R. Co. *vs.* Frank, 110 Fed. Rep., 689.

This court has laid down the principle that an injunction should be allowed against parties who infringed a trade-mark in good faith and against whom, therefore, no damages could be recovered, and against others whose sales, as this court finds, were so small that "they should not be required to account for gains and profits" (Saxlehner *vs.* Siegel-Cooper Company, 179 U. S., 42, 43). This, it may well be said, is an implied recognition of the principle here contended for, viz.: That the value of the trade-mark determines the amount in controversy, as otherwise it is difficult to see why this court, instead of directing the court below to enter a decree for complainants, did not direct the dismissal of the bill for want of jurisdiction.

In considering this question the court will remember that it appears from the pleadings in this case that *the right to the trade-mark itself was put in issue by the defendants*, and that

the right of the complainants to enjoy and protect their trade-mark, if they have any—without which it would be valueless—is challenged by charging them with the most atrocious frauds. (See answer, folios 12 to 14 of record.)

It is clear, therefore, that in this case the matter in dispute, the value of which determines the jurisdiction of the court, is the trade-mark itself and the right to its enjoyment. Even, therefore, if, in a case such as was suggested by Mr. Justice Brown on the argument, where only one bottle was sold, there might be some doubt whether an allegation that the trade-mark was worth more than $2,000 would be sufficient, if, on the coming in of the answer, it appeared that there was no denial of the right of complainants to their trade-mark, but that the only question to be litigated was whether or not defendant had made such sale, such doubt cannot exist in this case, where the defendant challenges the right of complainants to their trade-mark and their right to enjoy and protect it, without which it would be valueless, where the protection of such right is the object of the suit and where the injury and damage to complainants, were the contention of defendants to prevail, would be the loss of such trade-mark, the value of which is alleged to exceed $2,000.

Respectfully submitted.

ADOLPH L. PINCOFFS,
Counsel for Appellants.